

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 29 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MAHIJI SHANKARBHAI

KATHEWAS (BHAIYA)

Versus

POLICE COMMISSIONER

Appearance:

MR MITUL K SHELAT for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/04/2000

ORAL JUDGEMENT

1. The petitioner had sent an application through jail, which was treated as a petition under Article 226 of the Constitution and registered as Special Civil Application. As the petitioner was not represented by an advocate, legal aid was provided and Mr. Shelat appears

by way of legal aid advocate.

2. Commissioner of Police, Baroda City, Baroda passed an order on September 23, 1999, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Mahiji Shankerbhai Kethwas (Bhaiya) under the provisions of the PASA Act.

3. The authority took into consideration two offences registered against the detenu and statements of three witnesses, whose identity is not disclosed by the detaining authority in exercise of powers under Section 9(2) of the PASA Act, by claiming privilege in public interest. The detaining authority found that the activities of the detenu, as a dangerous person, are detrimental to public order and, therefore, he is required to be immediately prevented from pursuing his activities. The authority found that the goal cannot be achieved by resorting to less drastic remedies under ordinary laws and, therefore, the detenu was detained under the provisions of the PASA Act.

4. It is contended by Mr. Shelat that in both the registered offences, the detaining authority has not considered statements recorded under Section 161 of the Code of Criminal Procedure nor is the petitioner provided with copies of such statements. According to Mr. Shelat, non-consideration of these statements by the detaining authority, while passing the order, would vitiate the order and non-supply of the documents would affect the right of the detenu of making an effective representation and, therefore, the continued detention would be vitiated. In this regard, he placed reliance on the decision in the case of Jeeva Veiypuri Madrasi v. Commissioner of Police and Another, 1991(1) GLH 346.

4.1 Coming to the statements of anonymous witnesses, Mr. Shelat submitted that the exercise of powers under Section 9(2) of the PASA Act by the detaining authority is improper. According to him, the detaining authority has verified the statements on September 22, 1999 and has passed order on September 23, 1999 and, therefore, there was no time for the authority to undertake the exercise expected of it while exercising powers under Section 9(2) of the PASA Act. The order, therefore, would be rendered bad in law. In support of his arguments, Mr. Shelat placed reliance on the decision in the Case of Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659. Mr. Shelat submitted that the order is bad in law

and same may be quashed and set aside by allowing this petition.

5. Mr. K.T. Dave, learned Assistant Government Pleader has opposed this petition.

6. Having regard to rival side contentions, it may be noted that it is not disputed that the detenu is not provided with the copies of the statements recorded under Section 161 of the Code of Criminal Procedure. Non-supply of the copies of the statements would affect the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution. Therefore, this would vitiate the continued detention of the detenu (Jeeva Veiyapuri Madrasi v. Commissioner of Police and Another, 1991(1) GLH 346).

7. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has verified the statements on September 22, 1999 and has passed the order on September 23, 1999. Therefore, there was no time lag between the the two for arriving at a subjective satisfaction. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to taken into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659).

8. In the result, the petition is allowed. The

impugned order of detention dated September 23, 1999, passed against the detenu is hereby quashed. The detenu-Mahiji Shankarbhai Kethwas (Bhaiya) is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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